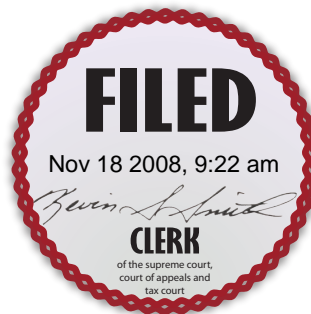


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

NORMAN NEVINGER, III and
MARK NEVINGER,

Appellants-Plaintiffs,

vs.

DERRICK NEVINGER, JANE NEVINGER and
PAPA NORM'S TRACK, LLC,

Appellees-Defendants,

ESTATE OF NORMAN D. NEVINGER, JR.,
DEREK NEVINGER and JANE NEVINGER both
individually and as the Independent Executor of
the Estate of Norman D. Nevinger, Jr.,

Counterclaimants,

vs.

NORMAN NEVINGER, III and
MARK NEVINGER,

Counterdefendants.

No. 56A04-0803-CV-183

APPEAL FROM THE NEWTON SUPERIOR COURT
The Honorable Daniel Molter, Judge
Cause No. 56D01-0701-PL-1

November 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

This case involves a family dispute surrounding the operation of a dragway, known as the U.S. 41 International Speedway, Inc. (“the Dragway”), and the ownership of the real property on which the Dragway sits as well as the personal property contained thereon. Norman Nevinger, III (“Norm”) and Mark Nevinger (“Mark”) (collectively, “the Plaintiffs”) filed a complaint against Derek Nevinger (“Derek”),¹ Jane Nevinger (“Jane”), and Papa Norm’s Track, LLC (“Papa Norm’s LLC”) (collectively, “the Defendants”), and the Defendants filed a motion to dismiss. The trial court considered matters outside the pleadings, thereby converting the Defendants’ motion to dismiss into a motion for summary judgment, and entered summary judgment in favor of the Defendants on the grounds that the Plaintiffs’ claims were barred by the applicable statutes of limitations and laches. The Plaintiffs argue that the trial court erred by: (1) considering matters outside the pleadings and converting the Defendants’ motion to dismiss into a motion for summary judgment and (2) granting summary judgment to the Defendants. Concluding that the trial court did not err by treating the

¹ Derek Nevinger is referred to in the Plaintiff’s complaint as “Derrick” but is referred to as “Derek” in his own pleadings. Therefore, we will refer to him as Derek.

Defendants’ motion to dismiss as a motion for summary judgment because both parties presented matters outside the pleadings for the trial court’s consideration and that the trial court properly granted summary judgment but on grounds other than those specified by the trial court, we affirm the trial court’s grant of summary judgment.

Facts and Procedural History

Norm and Derek are the sons of Norman Nevinger, Jr. (“Papa Norm”) and Jane. Mark is the brother of Papa Norm. In July 1992, the Dragway—which is located in Morocco, Indiana, and sits on approximately 101 acres of land—was incorporated as an Indiana corporation. Norm, Mark, and Papa Norm—along with Milburn Nelson, Larry Nelson, and Craig Nelson (collectively, “the Nelsons”)—were the original shareholders in the Dragway, and Norm owned the 101 acres of land upon which the Dragway sits.²

In 1996, the Nelsons initiated a lawsuit (“the Nelsons’ lawsuit”) against Norm, Mark, and Papa Norm regarding a dispute about ownership and control of the Dragway as well as a request for a receivership. Sometime later, Papa Norm, Norm, Mark, and the Nelsons entered into a settlement agreement, which resulted in the Nelsons’ lawsuit being dismissed by the parties’ stipulation. The settlement agreement apparently called for the Nelsons’ ownership interest in the Dragway to be bought out with a cash payment.³

² At the inception of the corporation, Milburn Nelson and Larry Nelson each had a twenty-five percent ownership interest, Norm had a twenty percent interest, and Papa Norm, Mark, and Craig Nelson each had a ten percent interest.

³ Both parties refer to the settlement agreement and the resulting buyout of the Nelsons’ ownership in the Dragway; however, neither party introduced a copy of the settlement agreement during the current proceedings. According to the parties, the trial judge in this current litigation was the trial judge in the Nelsons’ lawsuit.

In March 1998, Norm and Papa Norm executed a written agreement (“the Temporary Conveyance Agreement”), in which Norm “agree[d] to turn over [his] ownership in the Land only, to [Papa Norm] for the time span of 2 10 year[s] so [they] c[ould] buy out [the] Nelson[s] of all their interest.”⁴ Appellants’ App. p. 82.⁵ This agreement was handwritten on a sheet of the Dragway’s letterhead and was signed by Norm and Papa Norm. *Id.*

On April 5, 1999, Norm executed a quitclaim deed (“the Quitclaim Deed”), conveying his ownership in the 101 acres on which the Dragway sits to Papa Norm. The Quitclaim Deed was acknowledged by a notary public that same day and recorded with the Newton County Recorder’s office the following day. The Quitclaim Deed provided a legal description of the land but did not make any reference to or incorporate the March 1998 Temporary Conveyance Agreement between Norm and Papa Norm.

Thereafter, Papa Norm obtained a loan for \$500,000.00 and bought out the Nelsons’ ownership interests. Both Norm and Mark agreed to let Papa Norm operate the Dragway while he was paying off the loan. Papa Norm also formed Papa Norm’s LLC, of which he was the sole member, to operate the Dragway. The Dragway’s corporate entity still existed at the time Papa Norm formed the LLC, but the Dragway’s corporate form was administratively dissolved in May 2002 due to inactivity. Papa Norm, through

⁴ Norm and Papa Norm each initialed the crossing out of the two-year term and substitution with the ten-year term.

⁵ While we acknowledge that the Plaintiffs have attempted to comply with Indiana Appellate Rule 51(C) by paginating their Appellants’ Appendix, we note that the majority of the pages contained in their Appendix either do not have a page number or have a page number that is partially cut off or obscured. This failure to fully comply with Appellate Rule 51(C) impeded our review of the record, and we direct Appellants’ counsel to comply with the appellate rules in any future appeal.

his LLC, operated the Dragway and used the proceeds to pay down the loan incurred to buy out the Nelsons' ownership interests. Papa Norm operated the Dragway from 1999 until he died testate on February 3, 2005. After Papa Norm's death, Derek began to operate the Dragway.

Following Papa Norm's death, the Dragway—including the land on which it sits and the personal property contained thereon—passed into Papa Norm's estate ("the Estate"), of which Jane is the executor and trustee. All the assets of Papa Norm's LLC also went into the Estate. Papa Norm's will, which is currently being probated in a court in Illinois where Papa Norm lived, set up a trust that provides Jane with a lifetime benefit to the income and principle of the trust with the remainder going to Papa Norm and Jane's nine children.⁶ Norm and Mark did not file any claim in the probate matter to claim ownership in the Dragway's real or personal property.

Almost two years after Papa Norm's death, on January 16, 2007, Norm and Mark filed a complaint against Jane, Derek, and Papa Norm's LLC and alleged, among other things, fraud, conversion, and breach of fiduciary and other duties. The Plaintiffs' complaint acknowledges that Papa Norm had title to the Dragway real property at the time of his death and that "all proceeds" from the operation of the Dragway from 1998 to Papa Norm's death were "utilized to retire the financing and debt incurred to retire the interest of the Nelsons pursuant to the 'Settlement' and with the consent of Norm . . . and Mark." *Id.* at 53.

⁶ The record does not indicate the date that the probate matter was opened but does indicate that it was pending at the time the trial court considered the parties' arguments and issued the summary judgment ruling.

On July 20, 2007, Norm and Mark cut the lock on the gates of the Dragway, ran off the Dragway employees, and took over physical control and operation of the Dragway. In August 2007, after the trial court granted the Estate's petition to intervene, the Estate, Derek, and Jane (both individually and as executor of the Estate) (collectively, "the Counterclaimants") filed a counterclaim against Norm and Mark, which included a request for a preliminary injunction to remove Norm and Mark from the Dragway. The counterclaim also included claims of conversion, replevin, and ejectment and a request for an accounting.

On August 17, 2007, following a hearing on the request for a preliminary injunction, the trial court granted injunctive relief to the Counterclaimants and ordered Norm and Mark to, among other things, vacate the Dragway property, stay at least 500 feet away from the Dragway until further court order, and provide an accounting of all Dragway property disposed of or revenue received while in possession and control of the Dragway.

In October 2007, following the Counterclaimants' filing of a petition for a rule to show cause against the Plaintiffs for violating the injunction, the trial court held a show cause hearing, found Norm and Mark in contempt, remanded them to the custody of the sheriff, and ordered them to assist the sheriff in retrieving property taken from the Dragway.

In December 2007, the Defendants filed a motion to dismiss the Plaintiffs' complaint under Indiana Trial Rule 12(B)(6), arguing that the Plaintiffs' claims were barred by the applicable statutes of limitations, or, in the alternative, that their claims

were barred by the doctrine of laches.⁷ The Defendants attached pleadings and matters outside the pleadings—specifically, a copy of the 1999 Quitclaim Deed—to their motion to dismiss.

Thereafter, the Plaintiffs filed a response to the Defendants’ motion to dismiss. The Plaintiffs argued that when Norm executed the 1999 Quitclaim Deed, he did not intend for Papa Norm to retain the Dragway property in perpetuity, and they referred to the March 1998 Temporary Conveyance Agreement between Norm and Papa Norm as evidence of that intent. The Plaintiffs attached a copy of the Temporary Conveyance Agreement to their response motion as well as other matters outside the pleadings, such as a copy of an undated “Memorandum of Agreement” in which Norm, Mark, Papa Norm, and the Nelsons agreed to “organize a corporation . . . known as U.S. 41 INTERNATIONAL SPEEDWAY, INC.” *Id.* at 80. The Plaintiffs acknowledged that Papa Norm operated the Dragway with Norm and Mark’s consent from 1999 until 2005 and argued that their claims were not barred by the applicable statutes of limitations because the harm alleged in their complaint did not occur—or their causes of action did not accrue—until 2005 after Papa Norm’s death when Jane and Derek took over control and operation of the Dragway.

The Defendants then filed a reply in support of their motion to dismiss the Plaintiffs’ complaint. The Defendants attached a document to their reply in an attempt to show that the Dragway’s corporate entity had been administratively dissolved in May 2002. Within their reply, the Defendants requested that the trial court take judicial notice

⁷ The Defendants also argued that the Plaintiffs lacked standing because the majority of their claims were derivative corporate claims and improperly brought in Norm’s and Mark’s individual names. The trial court did not address the Defendants’ standing argument in its order.

of the administrative dissolution of the Dragway and consider the sworn testimony of Norm and Mark from the prior hearings before the trial court, which include the preliminary injunction hearing and the show cause hearing.

The trial court held a hearing on the Defendants' motion on February 28, 2008. During the hearing, the Defendants argued that the Plaintiffs' claims were time barred because their causes of action—which all stem from the fact that Norm conveyed the Dragway property to Papa Norm—accrued in 1999 when Norm executed the Quitclaim Deed. During their argument, the Defendants referred to the testimony of Norm and Mark from the prior hearings. The Plaintiffs argued that their claims were not untimely because their causes of action, as set forth in their complaint, did not accrue until 2005. The Plaintiffs cautioned the trial court that in ruling on the Defendants' motion to dismiss, it should only consider the facts as alleged in their complaint. However, at the same time, the Plaintiffs referred the trial court to their own outside exhibits attached to their response and acknowledged that the trial court could take judicial notice of facts beyond the pleadings. *See* Tr. p. 4, 6.

On March 3, 2008, the trial court entered an order dismissing the Plaintiffs' complaint with prejudice. The order provided, in relevant part:

The Court having considered the arguments of counsel, the previous sworn testimony introduced during the course of this cause of action and the pleadings and memorandum [sic] filed in support and in opposition thereto, the Court now finds the transactions which led Papa Norm assuming full ownership of the Dragway and its related assets occurred in 1999 with the Plaintiffs' full knowledge thereof. [Papa Norm] died in 2005. The Plaintiffs filed their cause of action against the Defendants in 2007. The Court finds that eight (8) years passed before the Plaintiffs' [sic] filed their cause of action and that as a result thereof have substantially prejudiced the ability of the Defendants to defend this cause of action.

The Court finds the Plaintiffs' claims for relief are subject to the six (6) year statute of limitations as contained in I.C. 34-11-2-7(4). In that the Plaintiffs waited eight (8) years to file their cause of action, the Plaintiffs' claims for relief are barred by statute and the Defendants' Motion to Dismiss Plaintiffs' Complaint should be granted.

Appellants' App. p. 83. Shortly thereafter, the trial court modified the order to make it a final judgment for purposes of appeal.⁸ The Plaintiffs now appeal.

Discussion and Decision

The Plaintiffs argue that the trial court erred by: (1) considering matters outside the pleadings and converting the Defendants' motion to dismiss into a motion for summary judgment and (2) granting summary judgment to the Defendants.

I. Conversion of Motion to Dismiss into Summary Judgment

We first address the Plaintiffs' contention that the trial court erred in converting the Defendants' motion to dismiss under Indiana Trial Rule 12(B)(6) into a summary judgment motion under Indiana Trial Rule 56.

Indiana Trial Rule 12(B) provides that a motion to dismiss under Rule 12(B)(6) "shall" be treated as a motion for summary judgment when "matters outside the pleading are presented to and not excluded by the trial court."⁹ Where a trial court treats a motion to dismiss as one for summary judgment, the court must grant the parties a reasonable opportunity to present Trial Rule 56 materials. Ind. Trial Rule 12(B). "The trial court's failure to give explicit notice of its intended conversion of a motion to dismiss to one for

⁸ The counterclaim against Norm and Mark was still pending at the time the Plaintiffs filed their notice of appeal.

⁹ Indiana Trial Rule 7(A) provides that pleadings consist of: "(1) a complaint and an answer; (2) a reply to a denominated counterclaim; (3) an answer to a cross-claim; (4) a third-party complaint, if a person not an original party is summoned under the provisions of Rule 14; and (5) a third-party answer."

summary judgment is reversible error only if a reasonable opportunity to respond is not afforded a party and the party is thereby prejudiced.” *Azhar v. Town of Fishers*, 744 N.E.2d 947, 950 (Ind. Ct. App. 2001) (citing *Ayres v. Indian Heights Volunteer Fire Dep’t*, 493 N.E.2d 1229, 1233 (Ind. 1986)).

The following considerations are relevant to a determination of whether a trial court’s failure to give express notice deprives the nonmovant of a reasonable opportunity to respond with Trial Rule 56 materials: (1) “whether the movant’s reliance on evidence outside the pleadings should have been so readily apparent that there is no question that the conversion is mandated by T.R. 12(B)[;]” (2) “whether there was ample time after the filing of the motion for the nonmovant to move to exclude the evidence relied upon by the movant in support of its motion or to submit T.R. 56 materials in response thereto[;]” and (3) “whether the nonmovant presented ‘substantiated argument’ setting forth how [he] ‘would have submitted specific controverted material factual issues to the trial court if [he] had been given the opportunity[.]’” *Azhar*, 744 N.E.2d at 950-51.

Here, although the trial court referred to the hearing on the Defendants’ motion as a hearing on a motion to dismiss, *see* Tr. p. 3, and indicated in its order that it was granting the Defendants’ motion to dismiss, *see* Appellants’ App. p. 83-84, a review of the record reveals that the trial court did not deprive the Plaintiffs of a reasonable opportunity to respond with Trial Rule 56 materials or that the Plaintiffs were prejudiced.

First, the Defendants’ reliance on the evidence outside the pleadings in this case was obvious. In support of its motion to dismiss the Plaintiffs’ complaint, the Defendants clearly submitted matters and evidence outside the pleadings, i.e., the 1999 Quitclaim

Deed. Given the mandatory wording of Trial Rule 12(B), the Plaintiffs should have known that the trial court was compelled to convert the motion into a summary judgment motion. *See Duran v. Komyatte*, 490 N.E.2d 388, 391 (Ind. Ct. App. 1986) (noting that the operation of Trial Rule 12(B) is “well known” and a “clear mandate” of which counsel should be cognizant), *reh’g denied, trans. denied*.

Second, the two-month period between the filing of the motion to dismiss and the hearing thereon was ample time to allow the Plaintiffs to either move to exclude the evidence relied upon by the Defendants or to submit Trial Rule 56 materials in opposition thereto. In fact, in its response to the Defendants’ motion, the Plaintiffs also submitted matters and evidence outside their complaint for the trial court’s consideration, *i.e.*, the March 1998 Temporary Conveyance Agreement and the Memorandum of Agreement. *See Appellants’ App.* p. 80-82.

Third, the Plaintiffs have failed to show what specific additional material they would have presented if express notice had been given. Indeed, the Plaintiffs rely on matters outside the pleadings in arguing that their cause of action accrued in 2005, *see Appellants’ Br.* p. 7-8, and assert that the outside materials presented, including the 1998 Temporary Conveyance Agreement and the 1999 Quitclaim Deed, show that material facts are at issue and that summary judgment is not proper.¹⁰ *See Appellants’ Reply Br.* p. 9.

¹⁰ The Plaintiffs also refer to the settlement agreement that resulted in the buyout of the Nelsons’ ownership in the Dragway as support for defeating the Defendants’ motion. Again, we note that neither party introduced a copy of the settlement agreement during the current proceedings.

Although the trial court misdesignated its judgment as a judgment granting a motion to dismiss rather than a grant of summary judgment, the trial court did provide the parties a reasonable opportunity to present materials pertinent to a summary judgment motion, making such a misdesignation harmless. *See Dixon v. Siwy*, 661 N.E.2d 600, 604 (Ind. Ct. App. 1996). We will, therefore, review this case as arising from a grant of summary judgment.

II. Summary Judgment

Here, the trial court granted summary judgment to the Defendants on the grounds that the Plaintiffs' claims were barred by the applicable statutes of limitations and laches.¹¹ When reviewing a grant or denial of summary judgment, our standard of review is well settled:

Our standard of review is the same as that used in the trial court: summary judgment is appropriate only where the evidence shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). A genuine issue of material fact exists where facts concerning an issue that would dispose of the litigation are in dispute or where the facts are capable of supporting conflicting inferences. Any doubt as to a fact or an inference to be drawn is resolved in favor of the non-moving party. We must carefully review a decision on a summary judgment motion to ensure that a party was not improperly denied its day in court.

¹¹ In its order, the trial court found that "the Plaintiffs' claims for relief [we]re subject to the six (6) year statute of limitations" but that "the Plaintiffs waited eight (8) years to file their cause of action, [thereby making] the Plaintiffs' claims for relief . . . barred by statute" and that "the transactions which led Papa Norm assuming full ownership of the Dragway and its related assets occurred in 1999 with the Plaintiffs' full knowledge thereof [but] that eight (8) years pass[ed] before the Plaintiffs' [sic] filed their cause of action and that as a result thereof have substantially prejudiced the ability of the Defendants to defend this cause of action." Appellants' App. p. 83. The Defendants point to the latter finding as a finding that the Plaintiffs' claims are also barred by the doctrine of laches. Although the trial court did not expressly state that the Plaintiffs' claims are barred by the doctrine of laches, we will treat it as such. *See Habig v. Bruning*, 613 N.E.2d 61, 63 n.1 (Ind. Ct. App. 1993) (treating the trial court's summary judgment order as including a finding that the plaintiffs' claim was barred by the doctrine of laches even though the court did not make an express finding in that regard), *trans. denied*.

Poznanski ex rel. Poznanski v. Horvath, 788 N.E.2d 1255, 1258 (Ind. 2003) (case citations omitted). In reviewing a trial court’s ruling on a motion for summary judgment, we may affirm on any grounds supported by the summary judgment materials. *Catt v. Bd. of Comm’rs of Knox County*, 779 N.E.2d 1, 3 (Ind. 2002).

The Plaintiffs contend that the trial court erred by granting summary judgment and determining that the Plaintiffs’ claims were barred by the applicable statutes of limitations. The parties agree that the Plaintiffs’ claims—except Count V, which has a six-year statute of limitations—have an applicable two-year statute of limitations.¹² See Appellants’ Br. p. 6; Appellees’ Br. p. 13. The parties, however, disagree about when the cause of action accrued for the Plaintiffs’ various claims.

The core of the Plaintiffs’ lawsuit is that Norm has an ownership interest in the real property of the Dragway pursuant to the March 1998 Temporary Conveyance Agreement and that Norm and Mark have ownership interests in the personal property, assets, and operation of the Dragway pursuant to their status as shareholders of the Dragway’s original corporate entity, U.S. 41 International Speedway, Inc.¹³

The trial court determined that the Plaintiffs’ claims accrued in 1999. We, however, need not delve into determining the accrual date of these claims because any cause of action that the Plaintiffs contend they have or any challenge to the ownership of

¹² The trial court determined that all of “the Plaintiffs’ claims for relief are subject to the six (6) year statute of limitations as contained in I.C. 34-11-2-7(4).” Appellants’ App. p. 83. The Plaintiffs argue on appeal that the trial court erred in determining the applicable statutes of limitations for all their claims except Count V. Because the parties agree on the statutes of limitations applicable to the Plaintiffs’ claims, we need not further address this argument.

¹³ The Plaintiffs’ breach of fiduciary duty claims—which allege that Jane and Derek, as beneficiaries and joint successor shareholders to shares that Papa Norm held in the Dragway’s corporate entity—are an offshoot of their claim of ownership interest to the Dragway’s personal property and assets.

the Dragway and its real and personal property should have been filed in the Estate action currently pending in Illinois, which has jurisdictional priority due to the fact that the challenged property is in the possession of Jane as executor of the Estate and is *in custodia legis*.¹⁴

Property held by an executor is *in custodia legis*, and such an executor's possession equates to possession by the court. *Isbell v. Heiny*, 218 Ind. 579, 33 N.E.2d 106, 108 (1941); *State ex rel. Tuell v. Shelby Circuit Court of Shelby County*, 216 Ind. 231, 23 N.E.2d 425, 427 (1939). "To interfere with [the executor's] possession is to invade the jurisdiction of the Court itself[.]" *Tuell*, 23 N.E.2d at 427.

We recently explained the doctrine of *res in custodia legis*:

Two courts having concurrent jurisdiction cannot deal with the same subject matter at the same time. *State ex rel. Amer. Fletcher Nat. Bank & Trust Co. v. Daugherty*, 258 Ind. 632, 283 N.E.2d 526, 528 (1972). Once a court has secured jurisdiction over the parties and the subject matter of an action, this jurisdiction is retained to the exclusion of other courts of equal competence until the case is determined. *Id.* The court first acquiring jurisdiction holds the *res in custodia legis* so long as it is empowered to administer complete justice. *Id.* Any contest or interpretation of a will or testamentary trust is to be conducted in the probate court in which the will or trust was initially entered in the correct manner. *Id.* at 529. . . . Thus, a court in which a will is correctly filed for probate holds the *res in custodia legis* and has jurisdiction over any will contest, interpretation of the will, or a challenge to the ultimate distribution of the estate's net assets to the exclusion of other competent courts.

Keenan v. Butler, 869 N.E.2d 1284, 1289 (Ind. Ct. App. 2007). Indeed, our courts "have consistently applied the general rule of jurisdictional priorities to probate proceedings." *Daugherty*, 283 N.E.2d at 528.

¹⁴ *In custodia legis* is defined as "[i]n the custody of the law." *Black's Law Dictionary* 783 (8th ed. 2004).

The record indicates that following Papa Norm's death, the Dragway—including the land on which it sits and the personal property contained thereon—passed into Papa Norm's Estate via his will, which is currently being probated in Illinois. The possession of the Dragway's real and personal property, which is currently being challenged by the Plaintiffs, is in the possession of the probate court; accordingly, jurisdiction over any challenge to the ownership of this Dragway property lies with the probate court. *See, e.g., Keenan*, 869 N.E.2d at 1289-90 (explaining that a party's action for breach of contract to make a will was incorrectly filed in the circuit court and should have been filed in the probate court where the will at issue was being probated); *Daugherty*, 283 N.E.2d at 528 (holding that a party's challenge to ownership of stock certificates and voting rights was a matter for the determination of the probate court, which was administering such assets and held the certificates *in custodia legis*); *Isbell*, 33 N.E.2d at 108-09 (concluding that the proper forum for a party's action for replevin to recover property was with the court where the estate was pending); *Tuell*, 23 N.E.2d at 427 (holding that the circuit court could not exercise jurisdiction over a challenge to ownership of property where such property was included as part of an estate being administered in the probate court).

In summary, the Plaintiffs' claims, which all stem from the ownership of the Dragway's personal and real property that is currently included as part of Papa Norm's Estate, should have been raised in the pending probate action. Although the trial court here granted summary judgment to the Defendants on the grounds that the Plaintiffs'

claims were barred by the applicable statutes of limitations and laches, we affirm the trial court's entry of summary judgment for the Defendant based on lack of jurisdiction.

Affirmed.

KIRSCH, J., and CRONE, J., concur.